

Service Date: June 20, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF Directory Service, Inc.,)	UTILITY DIVISION
Network Comm. Group, and Integretel Complaint)	
by the Montana Public Service Commission)	DOCKET NO. D2002.3.29
Regarding Unauthorized Charges on Customers')	ORDER NO. 6411b
Telecommunications Bills)	

TO: Directory Service, Inc.	Network Comm. Group
1901 South Congress Avenue, Suite 106	6278 N. Federal Highway #380
Boynton Beach, Florida 33426	Fort Lauderdale, Florida 33308

DEFAULT ORDER AND FINE

On March 8, 2002, the Montana Public Service Commission (PSC) issued a Complaint against Directory Services Inc. (DSI) and Network Communications Group (NCG). The Complaint identified an ongoing and frequent pattern of conduct in which DSI and NCG initiated unauthorized charges to customers in the State of Montana in the amount of \$2.12, beginning in or before December of 2001 and continuing through the end of February of 2002, when such billing was stopped through the PSC. At least 48,000 Montana numbers were billed for unauthorized charges placed by DSI and at least 12,600 Montana numbers were billed for unauthorized charges placed by NCG. These actions by DSI and NCG are in violation of Montana law pertaining to cramming. See, § 69-3-1301, MCA, et seq, and ARM 38.5.3901 through 38.5.3913.

By the terms of the complaint DSI and NCG were allowed 20 days to file a response. A response to a Complaint is an Answer. ARM 38.2.2107. DSI has not filed any response to the Complaint. NCG has not filed a response that comports with ARM 38.2.2107. On March 20, 2002, NCG submitted a letter to the PSC that appears to admit the violations (i.e., NCG authorizes credits to each and every Montana consumer through Integretel). The letter includes a narrative explanation, referencing how the service works and steps that will be implemented after February of 2002 to ensure that no more charges are made without customer authorization. The

letter states that NCG is closing “the door for our services and business operations effective February 19, 2002.” The PSC does not view this response as a valid or legal defense.

On March 8, 2002 the PSC issued an Order (PSC Order No. 6411) requesting information regarding the Complaint and unauthorized charges (five questions). Responses to those questions were due on March 28, 2002. Neither DSI nor NCG responded to the Order. The failure of DSI and NCG to respond has deprived the PSC of any means of determining whether NCG and DSI may have some defense that the PSC could view as legitimate.

The PSC determines that NCG and DSI are in default for failure to file an Answer to the Complaint. To the extent the letter from NCG can be viewed as a response it appears to admit the violations alleged in the Complaint and directs Integretel to credit all Montana customers on its behalf. The PSC also determines that DSI and NCG are in default for failure to respond to PSC questions contained in Order No. 6411. DSI and NCG are subject to fines of up to \$1,000 for each violation. § 69-3-1305(3), MCA.

The maximum penalty that the PSC is authorized by statute to impose is \$1,000 per violation. DSI has committed at least 48,000 violations and NCG has committed at least 12,600 violations. If the maximum fine per violation is imposed, DSI would be subject to a penalty of \$1,000 per violation for 48,000 violations for a total of \$48,000,000.00 (Forty Eight Million Dollars), and NCG would be subject to a penalty of \$1,000 per violation for 12,600 violations for a total of \$12,600,000.00 (Twelve Million Six Hundred Thousand Dollars).

The PSC considers the violations that have taken place in this case to be egregious and the fraud that has been perpetrated in Montana intolerable. DSI and NCG have operated in flagrant violation of the laws of the State of Montana, and have done so with impunity. Monetary penalties are the statutory remedy the PSC is authorized to pursue, and imposing penalties as set forth above would reflect the gravity of the offenses that have occurred. However, taking the legislative mandate to the PSC to impose penalties in slamming and cramming cases together with the goal of attaining restitution for Montana customers who have been defrauded, the PSC chooses to exercise restraint in this case and impose penalties as follows:

Against DSI, \$10 per violation, at least 48,000 violations having occurred, for a total of \$480,000 (Four Hundred Eighty Thousand Dollars); and against NCG, \$10 per violation for 12,600 violations, for a total fine of \$126,000 (One Hundred Twenty Six Thousand Dollars).

THEREFORE, IT IS HEREBY ORDERED, DSI is in violation of § 69-3-1303, MCA and ARM 38.5.3901 for cramming violations, and that DSI pay \$10 per violation for 48,000 violations for a total of \$480,000 (Four Hundred Eighty Thousand Dollars) to the Montana Public Service Commission within 30 days of this Order.

IT IS FURTHER ORDERED THAT NCG is in violation of § 69-3-1303 and ARM 38.5.3901 for cramming violations, and that NCG pay \$10 per violation for 12,600 violations for a total of \$126,000 (One Hundred Twenty Six Thousand Dollars) to the Montana Public Service Commission within 30 days of the service date of this Order.

IT IS FURTHER ORDERED THAT in accordance with § 69-3-1305 MCA and ARM 38.5.3901 through 38.5.3913, the penalty imposed herein is in addition to any other penalties that may be imposed by law.

DONE AND DATED this 18th day of June, 2002 by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman, Voting to Dissent

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner, Voting to Dissent

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days.

DISSENTING OPINION OF COMMISSIONER BRAINARD

Docket No. D2002.3.29

It is the Commission's duty to enforce the laws of Montana. In this situation the Commission is technically doing its duty, but has deliberately chosen to impose a minimal amount as a fine. Investigation by the Commission reveals a clear intent to defraud Montana telephone customers and reveals total disregard for the law and common decency as well. Individual amounts billed to each customer may seem minimal but that was merely to hide the theft within the host of charges normally encountered on the bill. The real issue is the intent to commit fraud and that intent should be punished to the maximum extent provided by law.

The Commission made the right decision the first time this issue was acted on.. The current order (resulting from a motion to reconsider) reducing the amount of the fine is weak medicine indeed. The people of Montana expect their elected officials to act with vigor, not halfway measures. I cannot support a half measure of justice on behalf of Montana customers.

RESPECTFULLY SUBMITTED this 18th day of June, 2002.

Matt Brainard
Commissioner, District 4